TRANSFORMING THE SYSTEM

REQUIRE EQUITABLE

Parole and Probation

Parole and probation practices should be fair and consistent. They should be used as a tool to allow accused persons to safely remain in their communities. Instead, they are becoming tools for funneling people back into full custody.

Revocation of parole for minor technical violations is the leading cause of formerly incarcerated people returning to incarceration.[327] Individuals are routinely incarcerated for technical violations of probation or parole, such as missing a meeting or failing to obtain employment.[328] There must be policies adopted to ensure that parole and probation conditions are fair and reasonable. There has been considerable research on the benefits of a risk-needs-responsivity analysis in parole and probation. This approach should be promoted to ensure an individualized approach is adopted and should be encouraged as a tool for promoting release for individuals who would otherwise be incarcerated.[329]

Moreover, numerous studies show that parole and probation are applied in a discriminatory manner. African Americans are frequently given harsher conditions and longer terms, and are less likely to be offered parole than similarly situated whites.[330] Racial and ethnic disparities in parole and probation should be immediately addressed to reduce current inequities. The following policies should be adopted to ensure that these disparities do not persist.

327   Ibid.

328   American Civil Liberties Union, *Smart Reform is Possible: States Reducing Incarceration Rates and Costs While Protecting Communities* (Aug. 2011), https://www.aclu.org/files/assets/smartreformispossible.pdf. Over a third of prison admissions in this country are for individuals who have committed technical parole and probation violations—such as missing a parole meeting or failing to perform community service—not because they committed

329   Risk assessments should be favored to the extent they encourage the release of individuals who would otherwise be incarcerated. However, risk assessment tools may also exacerbate existing racial disparities in the criminal justice system by relying on data that is the result of racial biases that already exist in the criminal justice system. To address this issue, the data underlying risk assessment tools should be publicly available and transparent. The assessment tools should be culturally sensitive and provide for mechanisms to correct criteria that produce racially discriminatory

330   See Coke, *supra* note 4, at 22-23.

TRANSFORMING THE SYSTEM

State and local governments should pass legislation that:

▶ Eliminates incarceration for parole and probation violations and instead uses sanctions that are reflective of the violation, such as community service for missed meetings, or drug treatment for failure to comply with mandatory drug testing;[331]

▶ Relies upon community-based supervision where there are repeat violations of parole and/or parole restrictions;[332]

▶ Prohibits long-term incarceration for minor parole violations;[333]

▶ "Encourage[s] the use of intermediate sanctions facilities, [such as halfway houses] rather than prisons, for these parolees when they commit technical violations rather than new crimes;"[334]

▶ Adopts a risk-need-responsivity analysis approach, which focuses on an individual's risk of committing a crime, to favor release over an approach that is reliant upon incarceration;[335]

▶ Requires the collection, reporting, and publication of data disaggregated by race, religion, sex, gender, gender identity/expression, age, housing status. sexual orientation, HIV status, ethnicity, sexuality, immigration status, national origin,[336] and religious affiliation; and

▶ Evaluates individual parole and probation officers by the percentage of unwarranted racial disparities in their supervision tasks.

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331 ACLU, *Smart Reform is Possible: States Reducing Incarceration Rates and Costs While Protecting Communities* 13 (2011).

332 Ibid.

333 Ibid.

334 *Right on Crime, supra* note 303.

335   The risk-needs-responsivity approach is "[c]onsidered a best practice for criminal justice populations, this approach assesses both the risk of recidivism as well as needs related to substance use, mental health, and other social and environmental conditions, and determines the appropriate type and dose of treatments and other services necessary to maximize justice and health outcomes." *See* CHJ, *supra* note 85, at 3.

336 *See* CPD, *supra* note 90, at 20; *see also* Coke, *supra* note 4, at 21.